



Paper No. 6

International Plant Management, Inc.
55826 60th Avenue
Lawrence, MI 49064

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AUG 25 2003

In re Application of
Way et al.
Application No. 09/894,352
Filed: June 27, 2001
Title of Invention: 'NEWFANE CHERRY'
CULTIVAR

OFFICE OF PETITIONS

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed July 28, 2003, to revive the above-identified application.

This petition is hereby **Dismissed**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** final agency action within the meaning of 5 U.S.C. §704.

This above-identified application became abandoned for failure to timely file a reply to a non-final Office Action mailed October 2, 2002. The non-final Office Action set a three (3) month shortened statutory period for reply. No extensions of time were obtained under the provisions of 37 CFR 1.136(a). Accordingly, this application became abandoned on January 3, 2003. A Notice of Abandonment was mailed on May 20, 2003.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional"; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(c). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03 (c)(III)(C) and (D).

The instant petition lacks items (1). Petitioner is required to send a complete response to the October 2, 2002 non-final Office Action **with** the petition. Petitioner submitted \$315.00 for payment of the issue fee with the instant petition. However, this is not the required reply needed. Payment of the issue fee is not an appropriate reply until an

application has been allowed and a Notice of Allowance and Fee (s) Due has been mailed to applicant. The issue fee of \$315.00 will be returned to petitioner in the form of a treasury check. It is noted a new declaration was submitted with the petition in response to the Examiner's objection to the declaration in the October 2002 Office Action. However, applicant has failed to respond to the Objection to the Disclosure and the Claim Rejection stated in the October 2002 Office Action. On renewed petition applicant should submit a full response to the Office Action.

The petition has been signed by Wanda Heuser Gale who is listed as the correspondent for Assignee Cornell Research Foundation. A review of Office records shows inventor Roger D. Way is the only inventor who has assigned his interest to Cornell Research Foundation. Accordingly, Cornell Research Foundation is not the assignee of the entire interest. Pursuant to 37 CFR 1.33 (2)(b)(3) the signature of all applicants where there is no registered practitioner or an assignee of the entire invention is required. In this instance the signature of a representative of Cornell Research Foundation and the signatures of Robert Anderson and Susan Brown are required.

Further Correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile:

(703) 308-6916

By hand:

Office of Petitions
2201 South Clark Place
Crystal Plaza 4, Suite 3C23
Arlington, VA 22202

By delivery service:
(FedEx, UPS, DHL, etc.)

U.S. Patent and Trademark Office
2011 South Clark Place
Customer Window, Mail Stop Petition
Crystal Plaza Two, Lobby, Room 1B03
Arlington, VA 22202

Telephone inquiries concerning this matter should be directed to the undersigned at (703) 306-0251.



Charlema R. Grant
Petitions Attorney
Office of Petitions